

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ISABEL VALENCIA-PEREZ,

Plaintiff,

v.

DARYL SCHERMERHORN, in his
individual capacity and "JANE DOE"
SCHERMERHORN, as a marital
community; STEVEN MALPEZZI, in
his individual capacity and "JANE DOE"
MALPEZZI, as a marital community,

Defendants.

No. C 08-0920 RSM

ANSWER

Defendants, Daryl Schermerhorn, "Jane Doe" Schermerhorn, Steven Malpezzi, and "Jane Doe" Malpezzi, by and through their undersigned counsel, hereby answer plaintiff's complaint (the "Complaint") on information and belief as follows:

INTRODUCTION

Neither admit nor deny the allegations in the paragraph of the Complaint entitled "Introduction" because they describe the legal basis for the Complaint and/or are legal conclusions as to which no answer is required except expressly deny that defendants violated plaintiff's civil rights.

ANSWER
Case No. C 08-920 RSM

1 **I. PARTIES, JURISDICTION AND VENUE**

2 1.1. Deny knowledge or information sufficient to form a belief as to the truth of the
3 allegation in paragraph 1.1 of the Complaint.

4 1.2. Neither admit nor deny the allegations in paragraph 1.2 of the Complaint because
5 they constitute legal conclusions and/or the legal basis for the Complaint as to which no answer
6 is required except admit that Daryl Schermerhorn and "Jane Doe" Schermerhorn are husband
7 and wife.

8 1.3. Neither admit nor deny the allegations in paragraph 1.3 of the Complaint because
9 they constitute legal conclusions and/or the legal basis for the Complaint as to which no answer
10 is required except admit that Steven Malpezzi and "Jane Doe" Malpezzi are husband and wife.

11 1.4. Neither admit nor deny the allegations in paragraph 1.4 of the Complaint because
12 they constitute legal conclusions and/or the legal basis for the Complaint as to which no answer
13 is required.

14 1.5. Neither admit nor deny the allegation in paragraph 1.5 of the Complaint because it
15 constitutes the legal basis for the complaint and/or a legal conclusion as to which no answer is
16 required.

17 **II. STATUS OF DEFENDANTS**

18 2.1. Deny the allegations in paragraph 2.1 of the Complaint except admit that on or
19 about June 12, 2006, defendants were employees of the U.S. Customs and Border Protection, a
20 component agency of the U.S. Department of Homeland Security.

21 2.2. Neither admit nor deny the allegation in paragraph 2.2 of the Complaint because
22 they constitute the legal basis for the complaint and/or a legal conclusion as to which no answer
23 is required.

24 **III. FACTS**

25 3.1. Deny knowledge or information sufficient to form a belief as to the truth of the
26 allegation in paragraph 3.1 of the Complaint.

1 3.2. Deny the allegations in paragraph 3.2 of the Complaint except admit that on June
2 12, 2006, defendants were U.S. Border Patrol Agents.

3 3.3. Deny the allegations in paragraph 3.3 of the Complaint except admit that
4 defendants encountered plaintiff on June 12, 2006 in the City of Mount Vernon.

5 3.4. Deny the allegations in paragraph 3.4 of the Complaint except admit that on June
6 12, 2006, defendants were driving an unmarked government vehicle and were dressed in
7 business casual clothes.

8 3.5. Deny knowledge or information sufficient to form a belief as to the truth of the
9 allegations in paragraph 3.5 of the Complaint regarding what plaintiff “observed” or who, if
10 anyone, was “around him” at the time.

11 3.6. Deny the allegations in paragraph 3.6 of the Complaint except admit that
12 defendant Schermerhorn approached plaintiff.

13 3.7. Deny the allegations in paragraph 3.7 of the Complaint.

14 3.8. Deny the allegations in paragraph 3.8 of the Complaint.

15 3.9. Deny the allegations in paragraph 3.9 of the Complaint.

16 3.10. Deny the allegation in paragraph 3.10 of the Complaint except admit that
17 defendant Malpezzi identified himself to plaintiff.

18 3.11. Deny the allegations in paragraph 3.11 of the Complaint.

19 3.12. Deny the allegations in paragraph 3.12 of the Complaint except admit that officers
20 from the Mount Vernon Police Department arrived and subsequently transported plaintiff to the
21 Mount Vernon Police Department.

22 3.13. Deny knowledge or information sufficient to form a belief as to the truth of the
23 allegation in paragraph 3.13 of the Complaint regarding the population of Mount Vernon,
24 Washington. Deny the remaining allegations in paragraph 3.13 of the Complaint.

25 3.14. Deny the allegation in paragraph 3.14 of the Complaint.

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1 **IV. FIRST CAUSE OF ACTION**

2 4.1. Defendants restate each and every response set forth above in paragraphs 1.1
3 through 3.14 as if fully set forth herein.

4 4.2. Deny the allegations in paragraph 4.2 of the Complaint.

5 4.3. Deny the allegations in paragraph 4.3 of the Complaint.

6 **V. SECOND CAUSE OF ACTION**

7 5.1. Defendants restate each and every response set forth above in paragraphs 1 through
8 4.3 as if fully set forth herein.

9 5.2. Deny the allegations in paragraph 5.2 of the Complaint.

10 5.3. Deny the allegations in paragraph 5.3 of the Complaint.

11 **VI. PRAYER FOR RELIEF**

12 The section of the Complaint beginning with “WHEREFORE” contains the plaintiff’s
13 prayer for relief. To the extent that an answer is required, defendants deny that plaintiff is
14 entitled to any of the relief prayed for therein.

15 Any allegation set forth in the Complaint not heretofore answered is specifically denied.

16 **FIRST AFFIRMATIVE DEFENSE**

17 The Complaint fails to state a claim upon which relief can be granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 This Court lacks subject matter jurisdiction over the Complaint, in whole or in part.

20 **THIRD AFFIRMATIVE DEFENSE**

21 Defendants are immune from personal liability.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 Plaintiff is not entitled to punitive damages.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 Defendants did not proximately cause any damage to plaintiff.

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1 **SIXTH AFFIRMATIVE DEFENSE**

2 Plaintiff failed to exercise ordinary care.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 Defendants reserve the right to allege additional affirmative defenses.

5
6 WHEREFORE, having fully answered the Complaint against them, defendants
7 respectfully pray that this Court enter judgment in its favor and against plaintiff and grant such
8 other and further relief as this Court deems just and equitable.

9
10 DATED: November 28, 2008

Respectfully submitted,

11 JOSEPH P. RUSSONIELLO
12 United States Attorney

13 By: /s/
14 ELLEN M. FITZGERALD
Assistant United States Attorney